

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: KKC

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MICHAEL HERMAN)
CYNTHIA HERMAN)
Defendants.)
_____)

Criminal No.

A17 CR 301 SS

Violations:

18 U.S.C. § 371 – Conspiracy to Defraud
the United States; and
26 U.S.C. § 7206(1) – Making and
Subscribing a False Tax Return

INDICTMENT

THE GRAND JURY CHARGES:

At times material to this Indictment:

INTRODUCTION

1. MICHAEL HERMAN and CYNTHIA HERMAN (“the Defendants” or “the HERMANS”) were married and resided together within the Western District of Texas from about 2007 through 2015, the exact dates being unknown to the Grand Jury.

2. From in or about 2005 through in or about 2015, the HERMANS owned and operated Cindy’s Gone Hog Wild, a restaurant and bar in Travis County, Texas. The HERMANS incorporated the business and reported its income and expenses on IRS Forms 1120, U.S. Corporation Income Tax Returns. CYNTHIA HERMAN owned 100% of Cindy’s Gone Hog Wild, Inc.’s stock, and the HERMANS were the corporation’s only officers.

3. In addition to Cindy’s Gone Hog Wild, from about 2009 to about 2014, the HERMANS owned and operated two restaurants in Bastrop County, Texas: Cindy’s Downtown and Hasler Brothers Steakhouse. The HERMANS operated those two businesses under Cindy’s

Downtown, LLC, which reported its income and expenses on the HERMANS' IRS Forms 1040, U.S. Individual Income Tax Returns, Schedule C.

4. The Internal Revenue Service (IRS) was and is the agency of the United States Department of the Treasury responsible for the administration of the internal revenue laws of the United States.

COUNT ONE

Conspiracy to Defraud the United States (Violation of 18 U.S.C. § 371)

5. Beginning in or about 2007 and continuing until at least in or about 2014, the exact dates being unknown to the Grand Jury, in the Western District of Texas and elsewhere, MICHAEL HERMAN and CYNTHIA HERMAN, did unlawfully, voluntarily, intentionally and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the United States Department of Treasury in the ascertainment, computation, assessment, and collection of revenue: to wit, individual and corporate income taxes.

Manner and Means

Among the manner and means by which MICHAEL HERMAN and CYNTHIA HERMAN carried out the conspiracy were the following:

6. The HERMANS would and did conceal the true income of their businesses by depositing only a portion of the businesses' cash receipts into their business bank accounts. The HERMANS would and did report as income to their tax return preparer only those deposited cash receipts.

7. The HERMANS would and did cause tax deductions for business expenses to be overstated by paying various personal expenses with business funds, which they falsely categorized as business expenses.

8. The HERMANS would and did regularly pay a third-party investor by adding the investor to the payroll of Cindy's Downtown, LLC, even though that person performed no work for the company.

9. The HERMANS would and did file false tax returns with the IRS.

10. The HERMANS took action to conceal their crimes and avoid detection by the IRS.

Overt Acts

In furtherance of the conspiracy, and to effect the objects thereof, members of the conspiracy and others, both known and unknown to the Grand Jury, committed or caused to be committed the overt acts below, among others, within the Western District of Texas, and elsewhere:

11. MICHAEL HERMAN and CYNTHIA HERMAN filed and caused to be filed with the IRS false IRS Forms 1040, U.S. Individual Income Tax Returns, and false IRS Forms 1120, U.S. Corporation Income Tax Returns, on or about the dates listed below:

Tax Return	Taxpayer	Tax Year	Date Filed (on or about)
1120	Cindy's Gone Hog Wild, Inc.	2007	March 18, 2008
1120	Cindy's Gone Hog Wild, Inc.	2008	April 9, 2009
1120	Cindy's Gone Hog Wild, Inc.	2009	July 6, 2010
1040	Michael and Cynthia Herman	2009	April 7, 2011
1120	Cindy's Gone Hog Wild, Inc.	2010	April 11, 2011
1040	Michael and Cynthia Herman	2010	April 15, 2011

1040	Michael and Cynthia Herman	2011	June 12, 2012
1120	Cindy's Gone Hog Wild, Inc.	2011	September 17, 2012
1040	Michael and Cynthia Herman	2012	September 16, 2013
1120	Cindy's Gone Hog Wild, Inc.	2012	September 18, 2013

12. On dates unknown to the Grand Jury, MICHAEL HERMAN provided false and incomplete information to his tax return preparer for the purpose of preparing the tax returns listed above in paragraph 11.

13. On or about July 12, 2007, CYNTHIA HERMAN signed check #5074, drawn on Cindy's Gone Hog Wild, Inc.'s corporate bank account for \$1,693.27, written to "Bluebonnet Elect." that paid the separate electric bills for both Cindy's Gone Hog Wild and the HERMANS' personal residence. Handwritten on that check was an accounting code categorizing the payment as a business utilities expense.

14. On or about November 10, 2008, CYNTHIA HERMAN signed check #6928, drawn on Cindy's Gone Hog Wild, Inc.'s corporate bank account for \$355.02, written to Aqua Water Supply that paid the separate water bills for both Cindy's Gone Hog Wild and the HERMANS' personal residence. Handwritten on that check was an accounting code categorizing the payment as a business utilities expense.

15. On or about August 31, 2009, MICHAEL HERMAN signed check #2669, drawn on Cindy's Gone Hog Wild, Inc.'s corporate bank account for \$1,108.35, written to Runkles Pool Service, paying an expense pertaining to the HERMANS' swimming pool at their residence. Handwritten on that check was an accounting code categorizing the payment as a business maintenance and repair expense.

16. On or about August 12, 2010, MICHAEL HERMAN signed check #8134, drawn on Cindy's Downtown, LCC's business bank account for \$2,389.77, written to "Blue Bonnet" that paid the separate electric bills for both Cindy's Gone Hog Wild and the HERMANS' personal residence. Handwritten on that check was an accounting code categorizing the payment as a business utilities expense.

17. On or about October 21, 2011, MICHAEL HERMAN signed check #4140, drawn from Cindy's Downtown, LCC's bank account for \$1,720.55, written to Direct Propane that paid the separate gas bills for both Cindy's Gone Hog Wild and the HERMANS' personal residence. Handwritten on that check was an accounting code categorizing the payment as a business operations expense.

18. On or about September 5, 2012, CYNTHIA HERMAN signed check #4985, drawn on Cindy's Gone Hog Wild, Inc.'s corporate bank account for \$2,696.54, written to "Bluebonnet Elect." that paid the separate electric bills for Cindy's Gone Hog Wild and the HERMANS' personal residence. Handwritten on that check was an accounting code categorizing the payment as a business utilities expense.

19. On or about December 18, 2009, CYNTHIA HERMAN submitted a bi-weekly payroll report to Pacesetter Personnel Services stating that the HERMANS' personal household employee, known to the Grand Jury by the initials M.M., worked for Cindy's Gone Hog Wild, Inc. for 67 hours at \$7.25 per hour, knowing full well that M.M. did not perform such work for the corporation.

20. On or about November 5, 2010, CYNTHIA HERMAN submitted a bi-weekly payroll report to Pacesetter Personnel Service stating that a third-party investor, known to the

Grand Jury by the initials P.S., worked for Cindy's Downtown, LLC for 80 hours at \$9.37 per hour, knowing full well that P.S. did not perform such work for the company.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

Filing a False Document (Violation of 26 U.S.C. § 7206(1))

21. On or about March 30, 2011, in the Western District of Texas and elsewhere, the Defendants, MICHAEL HERMAN and CYNTHIA HERMAN, did willfully make and subscribe an IRS Form 1040, U.S. Individual Income Tax Return, for tax year 2010, which was verified by a written declaration that it was made under the penalties of perjury and which they did not believe to be true and correct as to every material matter. That document, which was filed with the Director, Internal Revenue Service Center at Austin, Texas, stated, on line 1 of the attached Schedule C, Profit or Loss From Business, that Cindy's Downtown, LLC received gross receipts or sales in 2010 of \$1,033,815 whereas, as they then and there knew, said gross receipts or sales substantially exceeded that amount. In addition, that document stated, on line 28 of the attached Schedule C, that Cindy's Downtown, LLC incurred total expenses in 2010 of \$413,427 whereas, as they then and there knew, said total expenses were substantially less than that amount.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

Filing a False Document (Violation of 26 U.S.C. § 7206(1))

22. On or about June 5, 2012, in the Western District of Texas and elsewhere, the Defendants, MICHAEL HERMAN and CYNTHIA HERMAN, did willfully make and subscribe an IRS Form 1040, U.S. Individual Income Tax Return, for tax year 2011, which was verified by

a written declaration that it was made under the penalties of perjury and which they did not believe to be true and correct as to every material matter. That document, which was filed with the Director, Internal Revenue Service Center at Austin, Texas, stated, on line 1b of the attached Schedule C, Profit or Loss From Business, that Cindy's Downtown, LLC received gross receipts or sales not entered on line 1a in 2011 of \$1,408,236 whereas, as they then and there knew, said gross receipts or sales substantially exceeded that amount in 2011. In addition, that document stated, on line 28 of the attached Schedule C, that Cindy's Downtown, LLC incurred total expenses of \$418,685 in 2011 whereas, as they then and there knew, said total expenses were substantially less than that amount.

In violation of Title 26, United States Code, Section 7206(1).

COUNT FOUR

Filing a False Document (Violation of 26 U.S.C. § 7206(1))

23. On or about August 27, 2013, in the Western District of Texas and elsewhere, the Defendants, MICHAEL HERMAN and CYNTHIA HERMAN, did willfully make and subscribe an IRS Form 1040, U.S. Individual Income Tax Return, for tax year 2012, which was verified by a written declaration that it was made under the penalties of perjury and which they did not believe to be true and correct as to every material matter. That document, which was filed with the Director, Internal Revenue Service Center at Austin, Texas, stated, on line 1 of the attached Schedule C, Profit or Loss From Business, that Cindy's Downtown, LLC received gross receipts or sales in 2012 of \$1,232,803 whereas, as they then and there knew, said gross receipts or sales substantially exceeded that amount in 2012.

In violation of Title 26, United States Code, Section 7206(1).

COUNT FIVE

**Filing a False Document
(Violation of 26 U.S.C. § 7206(1))**

24. On or about April 5, 2011, in the Western District of Texas and elsewhere, the Defendant, MICHAEL HERMAN, did willfully make and subscribe an IRS Form 1120, U.S. Corporation Income Tax Return, for tax year 2010 for Cindy's Gone Hog Wild, Inc., which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter. That document, which MICHAEL HERMAN signed in the Western District of Texas and filed with the Internal Revenue Service, stated, on line 1a, that the corporation had received gross receipts or sales in 2010 of \$708,224, whereas, as he then and there knew, said gross receipts and sales substantially exceeded that amount in 2010.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SIX

**Filing a False Document
(Violation of 26 U.S.C. § 7206(1))**

25. On or about September 17, 2012, in the Western District of Texas and elsewhere, the Defendant, MICHAEL HERMAN, did willfully make and subscribe an IRS Form 1120, U.S. Corporation Income Tax Return, for tax year 2011 for Cindy's Gone Hog Wild, Inc., which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter. That document, which MICHAEL HERMAN signed in the Western District of Texas and filed with the Internal Revenue Service, stated, on line 1b, that the corporation had received gross receipts or sales not reported on line 1a

in 2011 of \$183,108 whereas, as he then and there knew, such gross receipts or sales substantially exceeded that amount in 2011.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SEVEN

**Filing a False Document
(Violation of 26 U.S.C. § 7206(1))**

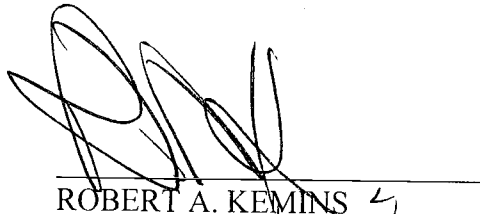
26. On or about September 18, 2013, in the Western District of Texas and elsewhere, the Defendant, MICHAEL HERMAN, did willfully make and subscribe an IRS Form 1120, U.S. Corporation Income Tax Return, for tax year 2012 for Cindy's Gone Hog Wild, Inc., which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter. That document, which MICHAEL HERMAN signed in the Western District of Texas and filed with the Internal Revenue Service, stated, on line 1a, that the corporation had received gross receipts or sales in 2012 of \$949,362 whereas, as he then and there knew, such gross receipts or sales substantially exceeded that amount in 2012.

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

**ORIGINAL SIGNATURE
REDACTED PURSUANT TO
E-GOVERNMENT ACT OF 2002**

RICHARD L. DURBIN, JR.
UNITED STATES ATTORNEY
WESTERN DISTRICT OF TEXAS

A handwritten signature in black ink, appearing to read 'R. Kemins', is written over a horizontal line.

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